

**STATE OF CALIFORNIA
OFFICE OF ADMINISTRATIVE LAW**

AGENCY: California Energy Commission)	DECISION OF DISAPPROVAL
)	OF REGULATORY ACTION
ACTION: Adoption of sections 1305, 1306)	(Gov. Code Section 11349.3)
1307, 1308, and 1309; Amendment of)	
sections 1301, 1303, 1304, 2503, and 2507;)	OAL File No. 00-1024-02 S
and repeal of sections 1305, 1306, 1307,)	
1308, 1309, 1310, 1311, and 1313 of)	
Title 20 of the California Code of)	
Regulations.)	
_____)	

BACKGROUND

The California Energy Commission proposed an extensive revision of the definitions of terms used in its data collection program; modification of the requirements for periodically reporting data applicable to gas and electric utilities, distributors, generators, retailers, service providers, and others; and changes in the rules on confidentiality and access to the data reported. The regulations were submitted to OAL on October 24, 2000, and disapproved on December 8, 2000.

DECISION

OAL disapproved the proposed regulations for the following reasons:

- 1) The Department has not secured the approval of the Department of Finance for its Fiscal Impact Statement, Std 399 Form.
- 2) The omission from the record of forms and instructions specified by the Executive Director for making annual reports makes a complete review of proposed section 1303 impossible. The identification of the form in the regulation is not clear. Also, to the extent the form contains any regulation, no provision has been made to bring its regulatory content into the codified regulations through printing or incorporation by reference.
- 3) The regulations utilize the NAICS Manual of 1997 as the source of standards for customer coding, but the regulations and record do not conform with the requirements of Section 20 of Title 1 of the California Code of Regulations for incorporation of materials by reference in regulations.
- 4) Proposed section 1303, subdivision (g), refers to a program of the Public Utilities Commission (CPUC) known as the "core aggregation program," and proposed

section 2507, subdivision (d), refers to economic industry groupings used by the California Employment Development Department (EDD) in its June, 2000, “*Current Employment Statistics* survey county reports,” however no information concerning the CPUC program and the EDD report were included in the record.

DISCUSSION

(1) DEPARTMENT OF FINANCE REVIEW

The Commission has not secured the approval of the Department of Finance for this rulemaking action. The Commission prepared a summary of the estimate of the fiscal impact of the proposed regulations on Form 399, and included its estimate in the notice of rulemaking. The Form 399 and the notice indicate that there will be a cost to the Commission of approximately \$100,000. for updating computer programs to accommodate the changes in data. This is a cost to the state that requires Department of Finance review pursuant to State Administrative Manual (SAM) section 6660.

The Form 399 also states that there will be *no fiscal impact* on local government. This statement appears to be at odds with information in the notice that says there will be “*de minimus* changes in costs” for a local agency that is an electric power plant owner, an electric utility, or a gas utility not currently reporting to the Commission. In the final statement of reasons, the Commission has combined the estimate of fiscal impacts on business and the estimate concerning public agencies. The Commission estimates “that the costs of complying with the regulations would be *de minimus*: on the order of \$84 to \$340 for initial costs, and \$40 to \$150 for annual costs, for a typical business.” Although these costs appear to be minor, they are not zero, and the Commission should present its 399 Form, the supporting data, and its analysis to the Department of Finance for its consideration and approval.

(2) FORMS OMITTED FROM RECORD

Proposed section 1303, subdivision (b), provides as follows:

“The data and reports shall be submitted on forms, and in accordance with instructions for the forms, specified by the Executive Director, which may include without limitation a requirement that the data or reports be submitted in electronic format generally or in a specific electronic format. The Executive Director shall consult with interested companies before specifying forms and instructions.”

The forms were not included in the rulemaking record. When a proposed regulation requires the use of a form OAL must be able to review the form to see if it contains any regulations. To the extent the form does contain regulations, their promulgation must comply with the Administrative Procedure Act. It may be that form contains no regulations and will simply be used to collect information, the reporting of which will be required by the codified regulations. In either case, when regulations requiring the use of a form are approved, OAL files the form with the Secretary of State to create a record of the form’s contents and preserve the authenticity of OAL’s approval of the rule that requires its use.

To insure clarity, the form must be specifically identified in the rule that requires its use. This is usually accomplished by identifying the form by its name or number, and revision date. Without this information, affected companies will not be able to know from the regulation what form or version of the form is required. If the form contains a regulation, then its regulatory content must be brought into the code by one of several available means. Such a regulation may be added to a codified regulation; the form itself may be published in the CCR; or the form may be incorporated into a codified regulation by reference. If the Commission elects to bring regulatory content into the CCR through incorporation by reference, then it must comply with the requirements of CCR, Title 1, section 20.

3) NAICS CODING SYSTEM

Proposed section 1302 defines the term *Customer Classification Code* and identifies the *North American Industry Classification System*, or NAICS as the coding system. It will be used to classify customers in electricity retailer and utility distribution company reports submitted pursuant to proposed section 1306, and gas retailer and local distribution company reports submitted pursuant to proposed section 1307. The regulations utilize the NAICS Manual of 1997 as the source of standards for coding, but the regulations and record do not conform with the requirements of Section 20 of Title 1 of the California Code of Regulations for incorporation of materials by reference in regulations. The regulation should expressly incorporate the NAICS by reference and the system manual should be included in the record.

4) CORE AGGREGATION PROGRAM & EDD INDUSTRY GROUPINGS

Proposed section 1303, subdivision (g), refers to a program of the Public Utilities Commission (CPUC) known as the “core aggregation program,” and proposed section 2507, subdivision (d), refers to economic industry groupings used by the California Employment Development Department (EDD) in its June, 2000, “*Current Employment Statistics* survey county reports,” however no information concerning the CPUC program and the EDD report were included in the record. This program and the report are not widely known, and in any event, have not been explained in the record. OAL must be able to understand the meaning of these references in order adequately review the proposed rules, and assure that they are clearly written.

For the foregoing reasons, OAL disapproved the proposed adoption, amendment and repeal of regulations.

OAL would like to acknowledge that the Commission has since submitted to OAL the *North American Industry Classification System Manual of 1997*; its own *Quarterly Fuel and Energy Report Forms and Instructions* (12/1990); information describing the Pacific Gas and Electric Company’s Core Gas Aggregation Service, [evidently a service under the California Public Utilities Commission’s Core Aggregation Program]; and information concerning economic industry groupings utilized by EDD in its June, 2000,

“Current Employment Statistics survey county reports.” OAL has not had time to review these materials carefully, however they may resolve a number of the issues addressed in this decision. Also, the notice of disapproval issued on December 8, 2000, advised the Commission that a public comment had not been summarized and responded to. The Commission has since amended its final statement of reasons to address the comment, so the issue is being dropped from this decision.

Date: December 15, 2000

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